

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED

CASE NO: 2606/2019
12/12/2019

In the matter between:

SA TAXI FINANCE SOLUTIONS (PTY) LTD

APPLICANT

and

J AND D PANELBEATERS CC
(REGISTRATION NUMBER: 2003/076219/23)

FIRST RESPONDENT

MATOME DANIEL RAMAPELA
(IDENTITY NUMBER: [....])

SECOND RESPONDENT

JUDGMENT

MAKGOBA JP

- [1] In this application the Applicant seeks an order that the Respondents must return a motor vehicle of which the Applicant is the owner upon the issuing

of security by the Applicant in the amount of the Respondent's purported claim. The application is opposed by the Respondents.

- [2] There are no material facts in dispute in this matter and it is only a question of law that requires adjudication by this Court. The Applicant's vehicle is in the possession of the Respondents. The Respondents are exercising a right of lien over the motor vehicle, hence the Applicant had tendered security in substitution of the Respondents' salvage lien.
- [3] The First Respondent stored the vehicle at its premises without the knowledge or permission of the Applicant and thus incurring daily costs. The First Respondent now claims a lien over the vehicle with regard to alleged "stripping and storage costs" in the total amount of R 89 160.00. The Applicant disputes liability in the aforesaid amount and further disputes that the First Respondent has a valid enrichment claim against it.
- [4] The Applicant tenders substitution of security to the First Respondent for the amount claimed against the return of its property, pending the outcome of an action to be instituted by the First Respondent. The First Respondent has not accepted the Applicant's tender for security and it is for this reason that the Applicant is compelled to launch the present application.
- [5] The only question in issue in the present proceedings is whether the First Respondent, alternatively the Second Respondent is entitled to remain in possession of the vehicle in exercise of a lien despite the fact that the Applicant as the owner of the vehicle has tendered security for the First Respondent 's full claim. To date the Respondents have failed to institute an enrichment claim against the Applicant.
- [6] A right of retention or lien is the right to retain physical control of another's movable property or immovable property as security for payment of a claim for money or labour expended on that property. Liens arise by operation of law. There are two kinds of liens namely, salvage and improvement liens (which are referred to as enrichment liens) and debtor and creditor liens. In this matter the Respondents rely on a salvage lien.
- [7] It is trite that the owner of the property burdened by a lien may defeat the lien by furnishing adequate security for payment of the debt secured by

the lien. See: **Wille's Principles of South African Law, 9th Edition page 665.**

This is exactly what the Applicant in the present application has done.

[8] In the present case the Respondents' lien over the Applicant's motor vehicle may be defeated by the Applicant giving adequate security for the claim of the Respondents for salvage costs. The Court has an unfettered discretion to grant such relief. See: **Zeda Financing (Pty) Limited v du Toit t/a Amco Diensstasie 1992 (4) SA 157 (0)** and **Pheiffer v Van Wyk 2015 (5) SA 464 (SCA).**

[9] In the present matter I am satisfied that the Applicant foreshadows the institution of action by the Respondents for the claim of an amount of R 89 160.00. However, the Applicant requires the return of its vehicle for which purpose it is prepared to provide security in substitution of the lien. I am inclined to exercise my discretion in favour of the Applicant in this regard.

[10] I accordingly grant the following order:

10.1. That the First Respondent, alternatively the Second Respondent are directed to immediately return the following motor vehicle to the Applicant upon the issuing of the letter of undertaking for funds to be held in trust by the Applicant's attorneys on behalf of the Respondent:

a 2013 TOYOTA QUANTUM SESFIKILE 16 SEATER - PETROL with engine number 2TR8540240, and chassis number AHTSX22P307009683.

APPEARANCES

Heard on

: 09 December 2019

Judgment delivered on : 12 December 2019

For the Applicant : Adv. J H Mollentze

**Instructed : Mari - Lou Bester Inc
c/o Diamond Inc**

For the First Respondent : Adv. J P Morton

Instructed : Rachidi Inc Attorneys